



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0188; FRL-9775-02-R4]

Air Plan Approval; Kentucky; Source Specific Changes for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), on March 4, 2020, and supplemented on January 28, 2022. The changes were submitted on behalf of the Louisville Metro Air Pollution Control District (District), which has jurisdiction over Jefferson County, Kentucky, and make changes to a Reasonably Available Control Technology (RACT) determination for a specific major source of nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions. EPA is approving these changes as they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0188. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to the Kentucky SIP that were received by EPA on March 4, 2020, and supplemented on January 28, 2022. Approval of this submission incorporates Board Order – Amendment 2, issued by the Air Pollution Control Board of Jefferson County (Board) for American Synthetic Rubber Company (ASRC), into the SIP. This amended Board Order¹ replaces in the SIP the existing Board Order issued by the Board for ASRC.

II. Analysis of State Submission

Three counties in the Louisville area (Jefferson County in Kentucky and Clark and Floyd Counties in Indiana) were designated as nonattainment for ozone on March 3, 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), after the CAA Amendments of 1990 were enacted, Jefferson County and portions of Bullitt and Oldham Counties in Kentucky and the Indiana Counties of Clark and Floyd were designated as the Louisville Moderate ozone nonattainment

¹ A Board Order issued by the Board is a regulatory instrument which specifies air pollution control limits or requirements for a specific source or company. See 66 FR 53665, 53671 (October 23, 2001) (Response 2I).

area (Louisville Area) under section 107(d)(4)(A) as a result of monitored violations of the 1979 1-hour ozone national ambient air quality standards (NAAQS) during 1987–1989.²

Section 182(b)(2) of the CAA requires states to adopt RACT for all major stationary sources of VOC in Moderate and above ozone nonattainment areas. Section 182(f) of the CAA requires that the same provisions for major stationary sources of VOC shall also apply to major stationary sources of NO_x. Therefore, pursuant to section 182(f), RACT is a requirement, with certain exceptions described therein, for major sources of NO_x in ozone nonattainment areas where VOC RACT applies.

To comply with the NO_x RACT requirement, which was a result of the Moderate nonattainment area designation for the 1-hour ozone NAAQS, the District submitted Jefferson County Air Quality Regulation 6.42, *Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities*, to EPA approval.³ Regulation 6.42 requires the establishment and implementation of RACT, including the determination and demonstration of compliance with RACT, for certain emission units located at a major stationary source of NO_x or VOC emissions and requires that each determination of RACT approved by the District be submitted to EPA as a source-specific revision to the Kentucky SIP. RACT is defined at paragraph 1.66 of District Regulation 1.02 as meaning “devices, systems, process modifications, or other apparatus or techniques, including pollution prevention approaches, that are reasonably available taking into account the necessity of imposing those controls in order to attain and maintain a national ambient air quality standard and the social, environmental, and economic impact of those controls.”

As discussed in EPA’s June 22, 2001 (66 FR 33505), proposal to redesignate the Louisville Area to attainment for the 1979 1-hour ozone NAAQS, Regulation 6.42 has been

² The Louisville Area was subsequently redesignated to attainment for the 1979 1-hour ozone NAAQS. See 66 FR 53665 (October 23, 2001). More recently, the Louisville Area was designated as Marginal nonattainment for the 2015 ozone NAAQS. See 83 FR 25776 (June 4, 2018).

³ EPA incorporated Regulation 6.42 into the Jefferson County portion of the Kentucky SIP on October 23, 2001. See 66 FR 53658.

implemented in part by means of Board Orders adopted by the Air Pollution Control Board of Jefferson County. Such Board Orders contain NO_x RACT and VOC RACT plans, which set forth RACT requirements for the source, including monitoring, recordkeeping, and reporting requirements, as attachments.

On August 1, 2019, ASRC submitted a proposed RACT plan to the District for three new boilers, referred to as Boilers B5, B6, and B7, that are planned to be constructed to replace the facility's existing Boiler Nos. 1, 2, 3, and 4. The Board approved Board Order – Amendment 1 on November 20, 2019. Board Order – Amendment 1 includes as an attachment a revised RACT plan that addresses RACT for both NO_x and VOC emissions.⁴ On March 4, 2020, the District, through the Cabinet, submitted a SIP revision to EPA to replace the existing Board Order for ASRC with Board Order – Amendment 1. On November 17, 2021, the Board approved Board Order – Amendment 2, which includes an updated RACT plan.⁵ On January 28, 2022, the District, through the Cabinet, submitted to EPA a supplement to the March 4, 2020, SIP revision to replace Board Order – Amendment 1 with Board Order – Amendment 2.

In a notice of proposed rulemaking (NPRM) published on April 26, 2022, *see* 87 FR 24510, EPA proposed to approve changes to the Jefferson County portion of the Kentucky SIP provided on March 4, 2020, and supplemented on January 28, 2022. The April 26, 2022, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before May 26, 2022. No comments were received on this action.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Board Order – Amendment 2, including the attached VOC/NO_x RACT Plan, for ASRC, effective November 17, 2021, as discussed in Section II of this preamble. Also in this

⁴ The existing SIP-approved Board Order does not include VOC RACT requirements.

⁵ Specifically, the RACT plan was updated to include revised NO_x monitoring requirements that are better suited to the 30-day rolling average NO_x limit for the new boilers.

document, EPA is finalizing the removal of the Board Order for ASRC effective January 1, 2001, from the Kentucky SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information) section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

IV. Final Action

EPA is approving the replacement of the existing Board Order in the Kentucky SIP for ASRC with Board Order – Amendment 2, including the attached VOC/NO_x RACT Plan, for ASRC, effective November 17, 2021, because it achieves at least the same level of NO_x emission reductions as the previously SIP-approved Board Order and meets the VOC RACT requirements of Regulation 6.42. ASRC's replacement of two existing coal-fired boilers and two existing natural gas-fired boilers with three new natural gas-fired boilers will achieve NO_x and VOC emission reductions at the facility, and there are no potential air pollutant emission increases associated with this proposed SIP revision. EPA is approving these changes because they are consistent with SIP-approved Jefferson County Air Quality Regulation 6.42 and with the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

⁶ *See* 62 FR 27968 (May 22, 1997).

provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Nitrogen oxides, Ozone, Reposting and recordkeeping requirements, Volatile organic compounds.

Dated: May 31, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S – Kentucky

2. In § 52.920(d), amend the table by:

- a. Removing the entry for “Board Order American Synthetic Rubber Company”; and
- b. Adding an entry at the end of the table for “Board Order for the American Synthetic Rubber Company – Amendment 2”.

The addition reads as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

| Name of Source | Permit No. | State effective date | EPA approval date | Explanations |
|---|-------------------|-----------------------------|---|--|
| ** | * | * | * | ** |
| Board Order for the American Synthetic Rubber Company – Amendment 2 | N/A | 11/17/2021 | [Insert date of publication in <i>Federal Register</i>], [Insert citation of publication] | Including the attached VOC/NO _x RACT Plan |

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[FR Doc. 2022-12065 Filed: 6/6/2022 8:45 am; Publication Date: 6/7/2022]